

**REPORT BY THE
AUDITOR GENERAL
OF CALIFORNIA**

**CALIFORNIA'S EFFORTS TO MEET
PARTICIPATION GOALS FOR MINORITIES'
AND WOMEN'S BUSINESSES IN STATE CONTRACTS**

**California's Efforts To Meet
Participation Goals for Minorities'
and Women's Businesses in State Contracts**

P-131, August 1991

**Office of the Auditor General
California**



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Honorable Robert J. Campbell, Chairman
Members, Joint Legislative Audit Committee
State Capitol, Room 2163
Sacramento, California 95814

Dear Mr. Chairman and Members:

The Office of the Auditor General presents its report concerning the State's implementation of Chapter 61, Statutes of 1988. We determined that some state departments have been slow in implementing the law and are inaccurately reporting minority and women's business participation in state contracts.

Respectfully submitted,

A handwritten signature in cursive script, reading "Kurt R. Sjoberg".

KURT R. SJOBERG
Auditor General (acting)

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Summary

Results in Brief Chapter 61, Statutes of 1988, revised the Public Contract Code to require state agencies that award contracts for construction, professional services, materials, supplies, or equipment to have statewide participation goals of at least 15 percent for minority businesses and at least 5 percent for women's businesses. During our review of state agencies' compliance with the law, we noted the following conditions:

- Some state agencies have not adopted rules and regulations for the purpose of implementing the law;
- Some state agencies have not always required successful bidders to document the efforts they have undertaken to include minorities' and women's businesses in contracts;
- Some state agencies are not reporting their participation levels to the Legislature and the governor, as required by law;
- State agencies did not use consistent methods to prepare the reports they submitted to the Legislature and the governor;
- The data the Office of Small and Minority Business (OSMB) and other state agencies included in their reports to the Legislature do not accurately reflect the actual participation levels of minorities' and women's businesses; and

- Although the data for participation levels of minority- and women-owned businesses for four of the five agencies we reviewed are inaccurate, it is still unlikely that these agencies would have met the goals had the data been reported correctly.

Background The statewide participation goals for minorities' and women's businesses apply to the overall dollar amount each state agency spends for the contracts that it awards during the year. However, each agency may, at its discretion, exempt from the statewide participation goals any contract of \$10,000 or less.

Good Faith Efforts

Chapter 1229, Statutes of 1989, revised the Public Contract Code to require agencies awarding contracts to consider the efforts of successful bidders to meet the participation goals of at least 15 percent and 5 percent, respectively, for minorities' and women's businesses. Although the participation goals apply to the overall dollar amount state agencies spend for contracts during the year, the code requires agencies to award contracts to the lowest responsible bidder that is either meeting the statewide participation goals or is making a good faith effort to meet the goals. Successful bidders can attempt to meet participation goals by including minorities' and women's businesses as subcontractors or suppliers.

Reporting Participation Levels

Each year, state agencies must report to the Legislature and the governor the participation levels of minorities' and women's businesses for the contracts they awarded during the year. If a state agency has not met the participation goals outlined in the law, it is required to report its reasons for not achieving the goals and the remedial steps it plans to take to increase its participation levels. Finally, the code requires each agency to adopt rules and regulations for the purpose of implementing the law.

In addition, the OSMB prepares an annual report for the Legislature presenting statistics for small business participation in state contracts. Although not required to do so, the OSMB has chosen to include data for the participation of minorities' and women's businesses in its annual report.

**Slow
Implementation
of the Law
Requiring
Participation**

Since January 1, 1989, Sections 10108.5 and 10115 of the Public Contract Code have required state agencies to achieve statewide participation goals of at least 15 percent for minority businesses and at least 5 percent for women's businesses. In addition, Sections 10108.5 and 10115.2 of the code require state agencies to ensure that successful bidders either meet or demonstrate that they have made a good faith effort to meet the statewide participation goals for minorities' and women's businesses.

During our review of contracts at five state agencies, we found that three of the five agencies were not always complying with the requirements and a fourth did not begin implementing the law until October 1990. As a result, minorities' and women's businesses may have been denied the opportunity to participate in these contracts. For example, we identified ten contracts that the California State University awarded without requiring the successful contractor to document good faith efforts to include minority- and women-owned businesses.

**Reports on
Statewide
Participation
Levels Are
Inaccurate**

The data the OSMB presented in its fiscal year 1988-89 and 1989-90 reports regarding the participation levels of minorities' and women's businesses were inaccurate. The information was inaccurate partly because the OSMB did not include the amounts that some state agencies reported for construction contracts that minorities' and women's businesses participated in as subcontractors. For example, the Department of Water Resources reported more than \$3.5 million for minority-owned and \$1.4 million for women-owned businesses, while in its annual report, the OSMB showed only \$1 million for minority businesses and \$311,526 for women's businesses. Because the OSMB did not

include the data the Department of Water Resources reported for minorities' and women's businesses as subcontractors, the participation levels for such businesses are understated.

Similarly, our review of reports that state agencies submitted directly to the Legislature and the governor revealed that the data in these reports did not accurately reflect the participation levels of minorities' and women's businesses in contracts. For example, the participation levels the Department of General Services reported for fiscal year 1989-90 may have been significantly understated because some units did not report any data for minorities' and women's businesses.

For example, the Office of Procurement, which reported more than \$846 million in purchases for fiscal year 1989-90, did not report any participation for minorities' and women's businesses. However, during our review of the Office of Procurement's purchases for December 1990, we determined that nearly 7 percent were for minority businesses and more than 4 percent were for women's businesses. If these amounts are reflective of actual participation for these businesses, the Office of Procurement may have underreported the participation levels of the businesses by more than \$90 million for fiscal year 1989-90.

Although the data for participation levels of minority- and women-owned businesses for four of the five agencies we reviewed are inaccurate, it is still unlikely that these agencies would have met the goals had the data been reported correctly.

Recommendations

To ensure that minority- and women-owned businesses have the opportunity to participate in contracts with the State, state agencies should take the following actions:

- Adopt regulations for implementing the law requiring state agencies to have statewide participation goals of at least 15 percent and at least 5 percent for minority- and women-owned businesses; and

- Fully implement policies and procedures to ensure that successful bidders are either meeting the statewide participation goals or are making good faith efforts to meet the goals by attempting to include minority- and women-owned businesses in their contracts.

To ensure that the data regarding the statewide participation levels of minorities' and women's businesses are accurate, the Legislature should revise the Public Contract Code to accomplish the following:

- Assign the OSMB as the office responsible for providing instructions to state agencies for reporting data on the participation levels of minorities' and women's businesses in state contracts and purchases;
- Require state agencies to report participation levels to the OSMB rather than directly to the Legislature and the governor; and
- Require the OSMB to include in its annual report to the Legislature participation levels of minorities' and women's businesses in state contracts and procurements, the reasons agencies have identified for not meeting the goals, and remedial steps agencies plan to take to increase participation levels.

**Agency
Comments**

We received written responses from the State and Consumer Services Agency, the Business Transportation and Housing Agency, the Resources Agency, the Youth and Adult Correctional Agency, and the California State University. In all cases, the agencies agreed with the findings and recommendations in our report. In addition, each agency indicated that it is fully committed to implementing the statewide program for providing minority- and women-owned businesses opportunities to participate in state contracts.

Introduction

Chapter 61, Statutes of 1988, revised the Public Contract Code to require state agencies that award contracts for construction, professional services, materials, supplies, or equipment to have statewide participation goals of at least 15 percent for minority businesses and at least 5 percent for women's businesses. Section 10115.1 of the code defines a minority business as a business that meets each of the following: it is at least 51 percent owned by one or more minorities, is managed and controlled by one or more minorities, and is a domestic corporation with its home office in the United States. Similarly, a women's business is defined as a business that is at least 51 percent owned by one or more women, is managed and controlled by one or more women, and is a domestic corporation with its home office in the United States.

The statewide participation goals apply to the overall dollar amount each department or state agency spends for the contracts that it awards during the year. However, each agency may, at its discretion, exempt from the statewide participation goals any contract of \$10,000 or less. For the purposes of our review, we defined contracts as all acquisitions of goods or services from nongovernmental entities whether through contracting or other purchasing mechanisms.

Good Faith Efforts

Chapter 1229, Statutes of 1989, further revised the Public Contract Code to require agencies awarding contracts to consider the efforts of bidders to meet the participation goals of at least 15 percent and 5 percent respectively for minorities' and women's

businesses. The code requires agencies to award contracts to the lowest responsible bidder either meeting the statewide participation goals by including minorities' and women's businesses as subcontractors or suppliers or making a good faith effort to meet the goals by attempting to include them.

To ensure that a bidder fulfills the requirement of making a good faith effort, state agencies should require the bidder to provide documentation showing that it has taken all of the following actions: contacted the awarding department, other state and federal agencies, and local minorities' and women's businesses to identify such businesses, advertised in papers focusing on these businesses, submitted invitations for bid to these businesses, and considered any available minorities' and women's businesses.

Each year state agencies must report to the Legislature and the governor their participation levels for minorities' and women's businesses in contracts. In addition, if a state agency has not met the participation goals outlined in the law, it is required to report its reasons for not achieving the goals and the remedial steps it plans to take to increase its participation levels. Finally, the code requires each agency to adopt rules and regulations for the purpose of implementing the law.

**Office of Small
and Minority
Business**

In 1973, the Legislature established the Office of Small Business Procurements and Contracts as part of the Small Business Procurement and Contract Act. The intent of the act is to aid, assist, and protect, as much as possible, the interests of small businesses and to ensure that a fair proportion of the State's total purchases and contracts or subcontracts for property and services are placed with such businesses. In 1983, the act was amended and the Office of Small Business Procurements and Contracts was renamed as the Office of Small and Minority Business (OSMB). The OSMB is an office within the Department of General Services.

The OSMB's primary duties under the act are as follows: to compile and maintain a comprehensive bidders' list of qualified small businesses, to provide technical and managerial aids to small businesses by conducting workshops related to state procurements and contracts, to assist small businesses in complying with procedures for bidding on state contracts, to disseminate information on bidding procedures, and to develop programs and practices that are necessary to protect the interest of small businesses in contracting with the State.

The OSMB provides services to businesses through five sections: Administration, Small Business Certifications, Small Business Programs, the California State Contracts Register, and the Minority and Women Business Enterprise Program. For example, the Small Business Programs section provides technical assistance to small businesses, businesses owned by disabled veterans, and minority- and women-owned businesses that are interested in participating in the State's purchasing and contracting system. Similarly, the Minority and Women Business Enterprise Program provides technical assistance to both state contracting officials and contractors on the requirements for meeting the statewide participation goals for minorities' and women's businesses.

To evaluate state agencies' progress in providing small businesses with the opportunity to participate in purchasing and contracting activities with the State, the act requires the Department of General Services to submit an annual report to the Legislature that contains data regarding contracts that were awarded to small businesses. The OSMB is the office within the Department of General Services that is responsible for preparing the report and submitting it to the Legislature. To assist the OSMB in compiling the information for the annual report, all state agencies are required to submit quarterly monitoring reports to the OSMB. Using these quarterly reports, the OSMB prepares the annual report, which presents statistics for small businesses' participation in state purchasing and contracting activity. Finally, although not required to do so, the OSMB has chosen to include data for minorities' and women's businesses in its annual report.

**Scope and
Methodology**

The purpose of this audit was to determine state agencies' compliance with the provisions of Chapter 61, Statutes of 1988, and to determine the reliability of data state agencies submitted to the OSMB and the Legislature concerning minority and women's business participation levels in state contracts and purchases.

Using statistics reported in the OSMB annual report for fiscal year 1989-90, we ranked all state agencies by total contracting and purchasing dollars and identified the top 20 agencies. After identifying these 20 agencies, we determined whether each had prepared a report of participation levels for minorities' and women's businesses in its contracts as required by Chapter 61, Statutes of 1988.

To determine state agencies' compliance with the statutory requirements for meeting the statewide participation goals of at least 15 percent for minority businesses and at least 5 percent for women's businesses, we reviewed certain units of 5 of the top 20 procurement agencies as reported by the OSMB. The five agencies we selected are as follows: the California State University, the Department of Corrections, the Department of General Services, the Department of Transportation, and the Department of Water Resources.

Because there are several units that participate in purchasing and contracting activities for their respective agency, we selected a sample of units at each of the five agencies. The table below shows the five agencies we visited and the units we reviewed.

Table 1 State Agencies and Units Within Each Agency We Reviewed

California State University	Department of Corrections	Department of General Services	Department of Transportation	Department of Water Resources
Campuses Sacramento San Jose Long Beach San Francisco	Planning and Construction Division	Office of Buildings and Grounds	Office of the Office Engineer	Contract Services Office
Chancellor's Office Physical Planning and Development	Contracts and Business Services	Office of Procurement	Office of Service Contracts	Program and Construction Liaison Section
Administrative Services		Office of the State Architect	Office of Materiel Operations	Materials Purchasing Section
		Office of Real Estate and Design Services	Administration and Management Services-- Los Angeles	Information Systems and Service Office (EDP)
			Administrative Services-- San Francisco	

We reviewed the laws, rules, and regulations relevant to the administration of contracts at each of the five agencies. In addition, we determined whether each agency had developed rules and regulations to comply with the requirements for achieving the statewide participation goals of at least 15 percent and 5 percent, respectively, for minorities' and women's businesses in state contracts.

We documented the efforts of each of the five agencies to meet the statewide participation goals for minorities' and women's businesses. For example, we determined if staff from the agencies had participated in seminars, conferences, training classes, or other outreach programs that provided information to help agencies increase their minority and women business participation levels. Finally, we selected a sample of contracts to determine if agencies had complied with either Sections 10108.5 and 10108.6 or Section 10115.2 of the Public Contract Code that requires agencies to award contracts to the lowest responsible bidder that is either meeting the participation goals or can document that it is making a good faith effort to meet them.

To determine the reliability of the data presented in the OSMB annual reports, we reviewed the annual reports that the OSMB prepared for fiscal years 1988-89 and 1989-90 as required by the Small Business Procurement and Contract Act. We reviewed the procedures the OSMB used to prepare these annual reports, and we determined the accuracy of the data the OSMB presented for the five agencies in our sample. Specifically, we obtained the quarterly monitoring reports each of the five agencies submitted to the OSMB and calculated yearly totals for minorities' and women's businesses and for total contract dollars. We then compared these figures with the totals the OSMB included in its annual reports.

In addition, we obtained copies of the reports each of the five agencies submitted to the Legislature to report its participation levels for minorities' and women's businesses as required by Chapter 61, Statutes of 1988. We reviewed the procedures each agency used to prepare the reports; however, we did not validate the dollars and percentages included in the reports. To determine if the information included in the annual reports was consistent among the five agencies, we used a standardized checklist to identify the types of contracts each agency included when compiling the data for its report.

Chapter 1 Some Agencies Have Been Slow To Implement the Law Requiring Participation of Minorities' and Women's Businesses in State Contracts

Chapter Summary

Some state agencies have been slow to implement the provisions of the Public Contract Code that require state agencies to have statewide participation goals of at least 15 percent for minority businesses and at least 5 percent for women's businesses. Specifically, we found that the Department of Corrections adopted regulations to implement the law in 1986; however, according to department documents, these regulations were generally suited to construction contracts. Therefore, the department has developed revised regulations, but as of July 29, 1991, the revisions had not been officially submitted for adoption as part of the California Code of Regulations. In addition, although the code section requiring all other agencies to adopt regulations to implement the program was enacted in 1988, two of the remaining four agencies in our sample have not adopted regulations. Further, three of the five agencies in our sample have not fully implemented the code sections that require the agency awarding the contract to ensure that successful bidders are either meeting the participation goals or are making good faith efforts to meet the goals by attempting to include minorities' and women's businesses as subcontractors or suppliers. As a result, such businesses may have been denied the opportunity to participate in state contracts.

Requirements for Participation Goals

Section 10115 of the Public Contract Code requires state agencies that award contracts for construction, professional services, materials, supplies, or equipment to have statewide participation goals of at least 15 percent for minority businesses and at least

5 percent for women's businesses. Also, Section 10108.5 of the code requires the Department of Corrections to have statewide participation goals of at least 15 percent for minority businesses, 5 percent for women's businesses, and 3 percent for businesses owned by disabled veterans in its contracts for construction, erection, alteration, repair, or improvement of state prison facilities. In addition, Section 10108.6 requires the Department of Corrections to have the same participation goals for its contracts for services, maintenance, and supplies as it does for its prison construction contracts. Contracts awarded by the Department of Corrections for services for inmates' medical needs and inmates' day labor are excluded from these requirements.

The law requiring the Department of Corrections to have statewide participation goals for its contracts was enacted in 1985; however, at that time, the law required the Department of Corrections to achieve statewide participation goals of 13 percent for minority businesses and 3 percent for women's businesses. Chapter 61, Statutes of 1988, effective January 1, 1989, established the current statewide participation goals of at least 15 percent and at least 5 percent for minorities' and women's businesses for all other state agencies and increased the Department of Corrections' participation goals to these same percentages. Furthermore, Chapter 1229, Statutes of 1989, listed the requirements that bidders must meet to demonstrate that they have made a good faith effort to achieve the statewide participation goals for minorities' and women's businesses.

Sections 10108.5, 10108.6, and 10115 of the code state that the statewide participation goals apply to the overall dollar amount each state agency spends for the contracts that it awards during the year. In addition, Sections 10108.5 and 10115.3 of the code require state agencies to adopt rules and regulations for the purpose of implementing the law. Finally, Section 10115.3 allows state agencies to adopt emergency regulations to implement the law while Section 10108.5 does not provide this opportunity for the Department of Corrections.

Good Faith Efforts

Sections 10108.5 and 10115.2 of the code require state agencies to consider the efforts of bidders to meet the participation goals when awarding contracts. Specifically, these sections of the code require state agencies to award contracts to the lowest responsible bidder that is either meeting the statewide participation goals or is making a good faith effort to meet the goals by attempting to include minority- and women-owned businesses in a portion of the contract as either subcontractors or suppliers.

To ensure that a bidder is making a good faith effort to meet the statewide participation goals, state agencies should require the bidder to provide documentation that it has taken the following actions: contacted the awarding department, other state and federal agencies, and local minorities' and women's businesses to identify such businesses, advertised in papers focusing on these businesses, submitted invitations for bid to these businesses, and considered any available minorities' and women's businesses. In addition, in their efforts to meet the statewide participation goals, bidders for contracts with the Department of Corrections must include businesses owned by disabled veterans as well as those owned by minorities and women.

Agencies Slow To Implement Participation Law

To determine whether state agencies are complying with the law that requires them to achieve statewide participation goals for minorities' and women's businesses, we reviewed the reporting procedures and contract documents at five state agencies. In addition, we determined if each of the agencies had adopted rules and regulations as required by the law. These five agencies are as follows: the California State University, the Department of Corrections, the Department of General Services, the Department of Transportation, and the Department of Water Resources. Moreover, to determine whether the state agencies had complied with the code sections that require agencies to ensure that successful bidders either met the statewide participation goals or have demonstrated that they made good faith efforts to meet the goals, we selected a sample of contracts awarded by each of the five agencies. We discuss the results of our review for each of the five agencies in the following sections.

California State University

At the California State University, we reviewed 50 contracts awarded by four campuses and two units of the Chancellor's Office during the period October 1990 through December 1990 and found that the campuses and the units had not complied with the requirements for ensuring that bidders made good faith efforts to obtain participation of minorities' and women's businesses in their contracts. According to officials at the California State University, the contracts did not include documentation of good faith efforts made by the bidders primarily because the university had not developed procedures to implement the program during this period. Furthermore, the Chancellor's Office did not distribute the proposed regulations and procedures to the campuses until December 1990.

According to the vice chancellor of Business Affairs, the California State University was requested by the Department of Finance and the Department of General Services to defer final action on the development of its regulations until the Department of General Services' regulations were approved and distributed as model regulations to assist agencies in complying with the law. The Department of General Services adopted and distributed the regulations in May 1990. After reviewing these regulations, the Chancellor's Office drafted its own proposed regulations, and the trustees approved them in November 1990. The Chancellor's Office distributed them to the campuses in December 1990, and the Office of Administrative Law approved them in February 1991.

To determine if the campuses and the units in the Chancellor's Office began to implement the procedures after receiving them in December 1990, we selected another sample of 83 contracts that the campuses and the units awarded during the period January 1991 through June 1991.

Of the 83 contracts we reviewed, we found that in awarding 42 (51 percent) of the contracts, the campuses and the units had not applied the procedures for requiring successful bidders to document the good faith efforts they had made to include minority- and women-owned businesses in the contracts. For 32 of the 42 contracts, the campuses and the units did not apply

the procedures because they believed that the contracts were exempt from the requirements. For example, the Physical Planning and Development section of the Chancellor's Office for the California State University awarded 8 contracts for professional services without applying the procedures. The acting general counsel at the Chancellor's Office indicates that the law is unclear about whether professional service contracts, which are not subject to competitive bid, are subject to good faith effort requirements. The remaining 10 contracts did not comply with good faith effort procedures.

However, we did find that most of the contracts for which the campuses and the units had ensured that bidders either met the participation goals or documented the good faith efforts they had made were awarded later in our review period, thus, suggesting that the campuses and units were beginning to comply with the law. Nevertheless, we also noted that the good faith efforts exerted by the bidders did not always result in the participation of minorities' and women's businesses in the contracts. For example, we identified 26 contracts for which the bidders complied with the requirement for documenting their good faith efforts and found that minority- and women-owned businesses participated in only 9 of these contracts.

Department of Corrections

The Department of Corrections complied with the law requiring it to ensure that bidders documented their good faith efforts for contracts for new prison construction. We reviewed 11 (39 percent) of the 28 contracts for new prison construction for which the Department of Corrections held bid openings during calendar year 1990 and found that the Department of Corrections had complied with the law for 10 of the contracts. Furthermore, we determined that minority- and women-owned businesses participated in all 10 of these contracts. For the remaining contract, the Department of Corrections determined that the contract did not offer sufficient opportunity for subcontracting. Therefore, according to the Department of Corrections, to comply with the law, it needed to exert a good

faith effort to obtain a minority or women's business as the prime contractor. The department generally complied with the requirements for demonstrating a good faith effort; however, it was unable to identify a minority-owned or women-owned business to award this contract to.

However, we did not review contracts the Department of Corrections awarded for services and commodities because it has not fully developed written procedures to ensure that successful bidders make good faith efforts to achieve the statewide participation goals for minorities' and women's businesses. In addition, the Department of Corrections is in the process of revising its regulations for implementing the laws regarding minorities' and women's business participation. Specifically, we found that the Department of Corrections adopted regulations to implement the law in 1986. However, according to department documents, these regulations were generally suited to construction contracts. Therefore, the department revised its regulations to better reflect the needs of service and commodities contracting. As of July 29, 1991, the revision had not been officially submitted for adoption as part of the California Code of Regulations.

Department of General Services

The Department of General Services is the remaining agency in our sample that did not fully comply with the requirement for ensuring that successful bidders either meet the statewide participation goals or document their efforts to meet them. We reviewed contracts at four offices within the Department of General Services--the Office of Buildings and Grounds, the Office of Procurement, the Office of Real Estate and Design Services (OREDS), and the Office of the State Architect--and found that three of the four offices had fully complied with the law; however, for its contracts and leases, the remaining office, the OREDS, had not.

The chief of the OREDS stated that it did not fully implement the requirements for its contracts before fiscal year 1991-92 because the contracts had either been awarded or were already through the bid process by the time the Department of General Services' regulations requiring bidders to document their good faith efforts were adopted in May 1990. Furthermore, the chief stated that, since that time, procedures have been established within the OREDS, and all contracts for fiscal year 1991-92 that exceed \$10,000 will be processed in compliance with the requirements for ensuring the participation of minorities' and women's businesses. Finally, with respect to leases, the OREDS indicated that some issues needed to be clarified and policy decisions had to be made before it could begin implementing the law. However, the chief indicated that the OREDS has developed policies and standard language for use in all lease packages and began implementing the law with regard to its leases in April 1991.

Finally, at the Office of Buildings and Grounds, we reviewed ten contracts for which the bidders documented the good faith efforts they had made to include minority- and women-owned businesses in their contracts as subcontractors and found that minorities' and women's businesses participated as subcontractors in two of the ten contracts.

Department of Transportation

The Department of Transportation participates in three different types of contracting activities: highway construction contracts; contracts for services; and procurement of materials, supplies, and equipment. According to the Department of Transportation, it encumbered approximately \$1.9 billion for contracts that it awarded during fiscal year 1989-90. Based on data the Department of Transportation provided, we estimate that contracts that included federal funds constituted approximately 78 percent of the total contract dollars awarded, and the contracts for the remaining 22 percent were funded exclusively with state monies.

The Department of Transportation's Legal Division, based, in part, on guidance from the Federal Highway Administration, determined that the requirements for obtaining minorities' and women's business participation in state contracts cannot be applied to contracts that are funded with all or with some federal dollars. As a result, to determine whether the Department of Transportation required successful bidders to document their good faith efforts to include minorities' and women's businesses in their contracts with the State, we limited our sample to those contracts that were supported entirely with state funds. We selected our sample of contracts from three locations: the headquarters office located in Sacramento and 2 of the 12 district offices, one located in San Francisco and the other in Los Angeles.

During our review, we determined that although the Department of Transportation is currently complying with the requirements for ensuring that bidders either meet the statewide participation goals or demonstrate that they made a good faith effort to contract with minorities' and women's businesses, it did not begin implementing the law until October 1990. We reviewed 36 contracts that the Department of Transportation awarded after October 1, 1990, and found that for 11 of the contracts the bidders met or exceeded the statewide participation goals of 15 percent for minority businesses and 5 percent for women's businesses. Of the remaining 25 contracts, 22 met the requirements for documenting good faith efforts, 2 of the contracts were cancelled, and the remaining contract was awarded to a minority business.

According to the interim director, the Department of Transportation began developing guidelines for complying with the law in 1988. However, the Department of Transportation suspended the development of its guidelines after receiving a memo from the Department of Finance that advised agencies to defer final action on the development of rules and regulations until the Department of General Services and the State Treasurer's Office had completed model regulations to assist agencies in complying with the law. After the Department of General Services' regulations were adopted in May 1990, the Department

of Transportation completed its own guidelines for complying with the law and began implementing those guidelines in October 1990. In addition, the Department of Transportation states that it is reviewing its draft regulations and plans to submit them to the Office of Administrative Law for review and filing.

Department of Water Resources

Although the Department of Water Resources has not adopted regulations as required by the code, it has established policies and procedures for achieving the participation of minorities' and women's businesses in its contracts. In addition, the Department of Water Resources is revising its administrative manual to include these policies and procedures.

We reviewed a sample of 13 contracts that the Department of Water Resources awarded during the period October 1990 through December 1990; 5 were for construction projects, and the remaining 8 were contracts for services. Our review disclosed that in 6 of the 13 contracts, the Department of Water Resources met the statewide participation goals of at least 15 percent and at least 5 percent for minorities' and women's businesses. Of the remaining 7 contracts, 2 were exempt from the requirements, and 5 included documentation showing that the successful bidders made good faith efforts to subcontract with minorities' and women's businesses. Finally, minority- and women-owned businesses participated in 3 of the 5 contracts.

Effects of Not Implementing the Law

Because some agencies have not implemented or have been slow to implement the program for achieving statewide participation goals of at least 15 percent for minority businesses and at least 5 percent for women's businesses, such businesses may have been denied the opportunity to participate in contracts with state agencies. Furthermore, because state agencies are not always requiring contractors to document the steps they have taken to

meet the statewide participation goals, state agencies cannot ensure that the contractors are making good faith efforts to include minorities' and women's businesses in their contracts.

Conclusion Some state agencies have been slow to implement the provisions of the Public Contract Code that require state agencies to meet statewide participation goals of at least 15 percent for minority businesses and at least 5 percent for women's businesses. In addition, some agencies have not fully implemented the code sections that require them to ensure that successful bidders are either meeting the statewide participation goals or are making good faith efforts to meet the goals. Moreover, we determined that in some instances where bidders had fulfilled the requirements, their good faith efforts did not always result in the participation of minorities' and women's businesses in the contracts.

Recommendations To ensure that minority- and women-owned businesses have the opportunity to participate in contracts with the State, state agencies should take the following actions:

- Adopt regulations for implementing the law requiring state agencies to have statewide participation goals of at least 15 percent and at least 5 percent for minority- and women-owned businesses; and
- Fully implement policies and procedures to ensure that successful bidders are either meeting the statewide participation goals or are making good faith efforts to meet the goals by attempting to include minority- and women-owned businesses in their contracts.

Chapter 2 Reports on the Statewide Participation Levels of Minorities' and Women's Businesses in State Contracts Are Inaccurate

Chapter Summary

Although not required by law, the Office of Small and Minority Business (OSMB) has chosen to provide information on the participation levels of minorities' and women's businesses in its reports to the Legislature. However, the information for fiscal years 1988-89 and 1989-90 is inaccurate partly because the OSMB did not always include the amounts that some state agencies reported for contracts for construction projects that minorities' and women's businesses participated in as subcontractors. For example, the Department of Water Resources reported to the OSMB for fiscal year 1989-90 more than \$3.5 million for minority-owned and \$1.4 million for women-owned businesses, while in its annual report, the OSMB showed only \$1 million for minority businesses and \$311,526 for women's businesses. Because the OSMB did not include the data the Department of Water Resources reported for minorities' and women's businesses as subcontractors, the participation levels for such businesses are significantly understated.

Similarly, our review of reports that state agencies submitted directly to the Legislature revealed that the data in these reports did not accurately reflect the participation levels of minorities' and women's businesses in state contracts. For example, our review of procedures used by four campuses and two units of the Chancellor's Office for the California State University revealed that three campuses and one of the two units in the Chancellor's Office did not report data for the participation of minorities' and women's businesses as subcontractors. As a result, the three campuses and the unit underreported the participation levels for such businesses. Finally, although the data included in the

OSMB reports and the reports the five agencies in our sample submitted to the Legislature are inaccurate, it appears unlikely that four of the five agencies would have met the goals even if the data were accurate.

**Data Reported
by the OSMB
Are Inaccurate**

In 1973, through the enactment of the Small Business Procurement and Contract Act, the Legislature sought to promote and facilitate full participation of small businesses in California's free enterprise system. Furthermore, the Legislature declared that the State should aid, assist, and protect the interests of small businesses and ensure that a fair portion of the total purchases and contracts or subcontracts for property and services for the State are placed with small businesses. Section 14837 of the Government Code defines a small business as a business that is independently owned and operated, is not dominant in its field of operations, whose principal office is in California, and whose officers reside in California. In addition, the code section states that dollar volume of business should also be used as criterion when determining if a business meets the definition of a small business.

To evaluate state agencies' success in placing a portion of their purchases and contracts with small businesses, Title 2, Section 1896.8 of the California Code of Regulations and Section 1260 of the State Administrative Manual require all state agencies to report quarterly to the OSMB on the participation levels of small businesses. The OSMB uses this information to compile an annual report that it submits to the Legislature. Although not required to do so, the OSMB has chosen to include data for minorities' and women's businesses in the annual report.

To determine if the participation levels for minorities' and women's businesses reported in the OSMB's reports for fiscal years 1988-89 and 1989-90 are accurate, we reviewed the quarterly reports submitted by five agencies: the California State University, the Department of General Services, the Department of Corrections, the Department of Transportation, and the Department of Water Resources. In addition, we reviewed the

instructions the OSMB issued to state agencies for use in completing the quarterly reports. Finally, we reviewed the procedures the OSMB used to compile the information from the quarterly reports into the annual report.

Our review disclosed that the data presented in the annual reports for four of the five agencies in our sample were inaccurate. For example, in its report for fiscal year 1989-90, the OSMB incorrectly calculated the yearly totals for 6 of the 19 campuses of the California State University. One of the six campuses, Dominguez Hills, submitted quarterly reports showing that minorities' and women's business participation levels totaled \$389,855 and \$64,553, respectively; however, the OSMB report showed only \$277,255 for minority businesses and \$57,111 for women's businesses. Similarly, the San Diego campus reported \$227,545 for minority-owned and \$146,308 for women-owned businesses, yet the OSMB report showed only \$123,108 and \$145,776, respectively, for these businesses. The participation levels for minorities' and women's businesses for these two campuses were underreported because the OSMB omitted data that the campuses had included on the quarterly reports. For example, the yearly totals the OSMB calculated for the San Diego campus did not include data from the first quarterly report the campus submitted for the fiscal year.

Similarly, the data the OSMB presented for the Department of Water Resources in its annual report for fiscal year 1989-90 were incorrect. Specifically, we determined that the amount the OSMB reported for minority business participation was underreported by \$1,000 and the amount for total contracts was underreported by \$1,586,545. These errors occurred because the OSMB incorrectly calculated the totals from the four quarterly reports submitted by the Department of Water Resources.

In addition to the mathematical inaccuracies in the data presented in the annual reports, our review also disclosed that the OSMB did not include the amounts that two of the five agencies in our sample reported for minorities' and women's businesses participation in subcontracts for construction projects. As a

result, the amount of contract dollars for minorities' and women's businesses in the annual reports for these state agencies are understated.

For example, in its annual report for fiscal year 1989-90, the OSMB did not include the amounts that the Department of Water Resources had reported for subcontracts with minorities' and women's businesses. In its report, the OSMB showed \$1,005,017 for minority-owned businesses and \$311,526 for women-owned businesses; however, our calculations, which include the amounts the Department of Water Resources reported for subcontracts, indicate that the totals should be \$3,541,048 for minority-owned and \$1,474,892 for women-owned businesses. As this example demonstrates, because the OSMB did not include the amounts the Department of Water Resources reported for subcontracts with minorities' and women's businesses, the total dollars for such businesses are understated in the OSMB report. Furthermore, using our calculations, the participation levels are 3.15 percent for minority-owned businesses and 1.31 percent for women-owned businesses rather than .91 percent and .28 percent, which the OSMB reported for these two groups.

Our analysis of the data that the Department of Corrections reported for fiscal year 1989-90 and the amounts the OSMB included in its report for the same year revealed similar results as those for the Department of Water Resources. According to records compiled by the Department of Corrections, it awarded contracts totaling \$477 million. Capital outlay contracts, which include contracts for construction and for professional services, accounted for \$393.3 million (82.4 percent) of this total. According to the department's records for capital outlay contracts, more than \$45.9 million was awarded to minority-owned businesses and more than \$19.8 million was awarded to women-owned businesses. However, in its report for fiscal year 1989-90, the OSMB shows only \$352,782 for minority-owned and \$526 for women-owned businesses for these contracts.

There are three reasons for the significant differences between the figures compiled by the Department of Corrections and the amounts shown in the OSMB report. First, the OSMB did not include in its figures the amounts the Department of Corrections reported for minorities' and women's businesses that participated in construction projects as subcontractors. Specifically, the OSMB did not include amounts of \$26.3 million for minority-owned businesses and \$4.6 million for women-owned businesses that the Department of Corrections had included in the quarterly reports it submitted to the OSMB. Secondly, the Department of Corrections failed to report an additional \$14.9 million for minority-owned businesses and \$14.7 million for women-owned businesses that participated in construction projects as subcontractors. Finally, the Department of Corrections did not report any participation for minorities' and women's businesses in its contracts for professional services for the fiscal year. Records from the Department of Corrections show that minorities' and women's businesses participated as subcontractors in professional service contracts for a total of at least \$4.7 million and \$623,000, respectively.

Because the Department of Corrections did not report all participation and because the OSMB did not include the Department of Corrections' data for subcontracts, the figures the OSMB presented in its annual report for the participation levels of minorities' and women's businesses are grossly understated. For example, the OSMB report shows 1.11 percent for minority-owned businesses and 0.41 percent for women-owned businesses; however, after including all participation data reflected in the Department of Corrections' records for minorities' and women's businesses, the participation levels for these businesses increased to 10.7 percent and 4.6 percent, respectively.

According to the OSMB, it did not include all the amounts state agencies reported for subcontractors' participation in construction contracts because it did not want to overstate the total contract dollars for state agencies. The OSMB explained that, if state agencies do not subtract the amounts awarded to subcontractors for construction contracts from the amount

awarded to prime contractors, the total dollars reported for construction contracts would be overstated. Furthermore, the OSMB stated that it includes the amounts reported for subcontractors for the Department of Corrections and the Department of Transportation because these are the only two agencies that have the ability to report the amounts awarded to subcontractors. However, during our review, we found that the Department of Water Resources not only identified the amounts it awarded to subcontractors but also included these amounts in the quarterly reports it submitted to the OSMB. Moreover, as stated earlier, we found that the OSMB did not include the amounts that the Department of Corrections reported for its subcontracts.

Another reason the data published in the annual reports the OSMB issued for fiscal years 1988-89 and 1989-90 do not accurately reflect the participation levels for minority- and women-owned businesses is that the OSMB only included data for firms that were certified by the Department of Transportation as a minority- or women-owned business.

In 1986, a law that established a mechanism through which minority- and women-owned businesses could be certified by the Department of Transportation as socially and economically disadvantaged businesses was enacted. In addition, the law included a provision that requires state agencies to accept the certification by the Department of Transportation as evidence that the business qualifies as a minority- or women-owned business and prevents agencies from requiring any other type of certification. As a result of this legislation, the OSMB issued a memo to all state agencies stating that, beginning with its fiscal year 1988-89 report, it would only include data for minority- and women-owned businesses that were certified by the Department of Transportation. However, Sections 10108.5 and 10115 of the Public Contract Code do not require this certification for minority- and women-owned businesses to participate in contracts with state agencies.

As a result of including only certified firms, the annual reports the OSMB issued for fiscal years 1988-89 and 1989-90 understate the actual participation levels for minority-owned and women-owned businesses. For example, in its fiscal year 1989-90 report for the California State University, the OSMB showed only \$319,875 for minority businesses and \$77,532 for women's businesses for two of the campuses we visited. However, we determined that if the OSMB had included the amounts these campuses reported for noncertified businesses as well as certified, the totals would have been \$808,712 for minority-owned and \$824,197 for women-owned businesses.

The data presented in the annual reports the OSMB issued for fiscal years 1988-89 and 1989-90 do not accurately reflect the actual participation levels of minorities' and women's businesses. Therefore, these reports should not be relied upon by the Legislature and other policymakers to make modifications to the program for providing opportunities to such businesses.

**Data Reported
by State
Agencies
Are Inaccurate
or Inconsistent**

Section 10108.5 of the Public Contract Code (code) requires the Department of Corrections to report its participation levels for minorities' and women's businesses to the Legislature and the governor on or before July 1 of each year. Section 10115.5 of the code requires all other state agencies to report their participation levels for minorities' and women's businesses to the Legislature and the governor on January 1 of each year. In addition, these two code sections require the reports to include, if applicable, agencies' reasons for not meeting the statewide participation goals and to identify the remedial steps agencies' plan to take to increase their participation levels.

To determine if state agencies were complying with the reporting requirements, we selected 20 procurement agencies in the State that according to the OSMB's report for fiscal year 1989-90 spent the most on contracts. We obtained copies of the 1990 reports they prepared pursuant to the code. As shown in Table 2, our review disclosed that 6 of the top 20 procurement

agencies did not submit the required reports. Of the 14 agencies that prepared the reports, at least 10 did not submit the report on January 1 as required by the code. Three of the 6 departments that did not prepare the reports stated that they were waiting for instructions from the Department of General Services. The California Department of Education also cited lack of direction from the Department of General Services but still submitted a report in May 1991. However, the report included information for only one aspect of its contracting activities. The Department of Fish and Game stated that it did not prepare the report because of unforeseen staffing vacancies. Of the remaining two departments, the Military Department stated that it was not aware of the reporting requirement while the Department of Consumer Affairs did not provide an explanation for not preparing the report.

Table 2 **Reported Participation Levels of Minorities' and Women's Businesses for Twenty State Agencies**

Department	Total Contract Dollars	Minority Participation Percentage	Women Participation Percentage	Reporting Period
General Services	\$ 1,084,000,000	0.52%	0.31%	Fiscal year
California State University	443,198,478	3.76	2.16	Calendar year
Corrections	361,644,152	17.60	6.01	Calendar year
Personnel Administration	123,698,102	0.09	0.35	Fiscal year
Mental Health	96,984,610	14.13	4.55	Calendar year
Water Resources	49,500,000	5.83	1.08	Calendar year
Public Employees' Retirement System	48,151,991	0.14	0.07	Fiscal year
Motor Vehicles	41,754,247	3.38	2.02	Fiscal year
Youth Authority	25,712,000	13.00	5.00	Calendar year
Parks and Recreation	16,250,854	3.03	6.05	Calendar year
Justice	14,094,644	2.42	4.44	Fiscal year
Developmental Services	9,565,930	11.38	13.00	Fiscal year
Highway Patrol	9,315,354	3.27	3.15	Calendar year
Education	1,285,188	5.4	1.6	Fiscal year
Transportation	No Report	N/A	N/A	N/A
Consumer Affairs	No Report	N/A	N/A	N/A
Employment Development	No Report	N/A	N/A	N/A
Fish and Game	No Report	N/A	N/A	N/A
Military	No Report	N/A	N/A	N/A
Teale Data Center	No Report	N/A	N/A	N/A
Total	\$2,325,155,550	4.72%	1.95%	

Note: These figures were not audited by the Office of the Auditor General. Moreover, some state agencies did not report minorities' and women's business participation for all contracts; therefore, percentages may not reflect actual participation levels.

To determine the reliability of the data included in the state agencies' reports, we reviewed reporting procedures and contract documents at the five state agencies in our sample. During our review, we determined that four of the five agencies in our sample submitted reports. The Department of Transportation did not prepare the annual reports because it did not establish policies and procedures for implementing the law until October 1990. According to the interim director, the policies and procedures were not established until October 1990 because the Department of Finance instructed all state agencies to use the regulations adopted by the Department of General Services as a model for developing their policies and procedures, and the Department of General Services did not adopt its regulations until May 1990.

Although the Department of Transportation did not complete its policies and procedures for implementing the state law until October 1990, since 1987, according to the deputy director of administration, it has participated in a federal program that requires agencies to establish a goal of awarding at least 10 percent of their highway construction contracts to disadvantaged businesses. The definition of a disadvantaged business includes both minority businesses and women's businesses. During federal fiscal year 1989-90, the Department of Transportation established a goal of awarding 20 percent of its highway construction contracts to disadvantaged businesses, and according to a report by the Federal Highway Administration, it achieved a participation level of 20.3 percent for that year.

In July 1991, the Department of Corrections issued its report for contracts it awarded during calendar year 1990, as required by Section 10108.5 of the Public Contract Code. In this report, the Department of Corrections presents the participation levels of minorities' and women's businesses for the contracts it awarded for new prison construction and for professional services. However, contrary to the law, the Department of Corrections did not report the participation levels for other types of contracts it awarded, such as contracts for the alteration, repair, or improvement of existing state prison facilities.

During our review of the reports submitted by the three remaining agencies in our sample, we found that the agencies did not use consistent procedures to prepare the reports. For example, two of the agencies reported their participation levels for the calendar year while the remaining agency, the Department of General Services, changed the time period it included in its reports from one year to the next. In the first report it submitted to the Legislature in January 1990, the Department of General Services included data for calendar year 1989 while in its next report, submitted in February 1991, it included data for fiscal year 1989-90. As a result, the two reports contain data that overlap for the last six months of 1989. The Department of General Services' Office of Management Technology and Planning, the unit responsible for preparing the reports, has directed departmental units to prepare the next report on a fiscal year basis.

In addition to using different time periods to report their participation levels, units within two of the three agencies used other inconsistent methods to compile data. For example, during our review of procedures that four units in the Department of General Services used to calculate participation levels, we found that two of the units included all contracts in their calculations of participation levels while the other two units did not include any contracts for amounts of \$10,000 or less in their calculations.

Similarly, our review of the procedures used by four campuses and two units of the Chancellor's Office for the California State University revealed that three campuses and one of the units did not report amounts for subcontracts with minorities' and women's businesses in their calculations of participation levels. In addition, one campus reported subcontracts with minorities' and women's businesses in its public works contracts but not in its other contracts. The remaining unit did include this subcontracting data in its calculations. The four campuses and the unit in the Chancellor's Office did not report this data because they use computerized accounting systems to compile the information, and the programs for these systems do not generate data for subcontracts. As a result, the four campuses and the unit in the Chancellor's Office underreported their participation levels for minorities' and women's businesses.

Finally, the participation levels the Department of General Services reported for fiscal year 1989-90 may have been significantly understated because some units in the Department of General Services did not report any data for minorities' and women's businesses. For example, the Office of Procurement, which reported more than \$846 million in contracts for fiscal year 1989-90, did not report any participation for minorities' and women's businesses. The Office of Procurement contracts for the purchase of commodities and materials for other state agencies; therefore, it was responsible for reporting the participation of minorities' and women's businesses for all purchases it made on behalf of other state agencies.

We determined that, in December 1990, the Office of Procurement processed purchase orders totaling approximately \$22 million. Of the \$22 million, minority businesses accounted for approximately \$1.5 million (nearly 7 percent) and women's businesses accounted for approximately \$900,000 (more than 4 percent) of the total. If these amounts are reflective of minorities' and women's business participation in annual purchases processed by the Office of Procurement, the Department of General Services may have underreported the participation levels of minorities' and women's businesses by more than \$90 million for fiscal year 1989-90.

According to the purchasing manager, because of the lack of regulations before June 1990, the Office of Procurement did not report any participation for minorities' and women's businesses because it was unable to determine what vendors were minorities' and women's businesses. However, he stated that after the Department of General Services' regulations were adopted in May 1990 for the participation of minorities' and women's businesses in state contracts, the Office of Procurement began in July 1990 to track the amount of orders placed with these businesses; therefore, it will have accurate information to report for fiscal year 1990-91. The Office of Procurement is able to track this information because the new regulations include a provision that allows bidders to submit, as part of the bid package, statements certifying that the businesses that will participate in the contract meet the definition of a minority-owned or women-owned business.

The law does not identify a central agency, such as the Office of Small and Minority Business, that is responsible for providing guidance to state agencies for reporting the participation levels of minorities' and women's businesses in state purchases and contracts. As a result, each agency independently determines what it will include in the report it submits directly to the Legislature. Consequently, the data agencies include in their reports are inconsistent. Because the agencies have not reported data in the same ways, the reported participation levels should not be relied upon to determine which agencies in the State are successfully implementing the law.

**State Agencies
Are Not Meeting
Goals**

Although we determined that the data included in the OSMB reports and the reports the five agencies submitted directly to the Legislature are inaccurate, the participation levels in these reports are still so low that it appears unlikely that four of the five agencies in our sample would have met the participation goals of 15 and 5 percent for minorities' and women's businesses even if the data had been accurate. For example, we determined that, to meet the participation goals of at least 15 percent for minority-owned businesses and at least 5 percent for women-owned businesses, the total amount the OSMB reported for fiscal year 1989-90 for the five agencies in our sample would have to increase more than \$392 million for minority-owned businesses and more than \$96 million for women-owned businesses.

Table 3 shows the amounts the OSMB reported for the five agencies in our sample for fiscal year 1989-90 and the amounts each agency would have awarded to minorities' and women's businesses if it had achieved the goals of 15 and 5 percent. Specifically, the table shows that the five agencies in our sample would have awarded more than \$558 million to minority businesses and more than \$186 million to women's businesses if they had met participation goals; however, the participation levels for the five agencies, as reported by the OSMB, were approximately \$166 million for minority businesses and approximately \$90 million for women's businesses. Therefore, to reach the

goals of at least 15 percent participation for minority businesses, the amount would have to increase by more than \$392 million, more than twice the amount the OSMB reported for minority businesses. Similarly, for the agencies to achieve full participation for women's businesses, the amount the OSMB reported would have to increase more than \$96 million for women-owned businesses.

Table 3
Comparison of Amounts Reported
by the Office of Small and Minority Business
With the Amounts Calculated at Full Participation
for Minorities' and Women's Businesses
Fiscal Year 1989-90

Department	Total Contract Dollars	Minority Participation			Women's Participation		
		15 Percent Goal	Amount Reported	Percent Reported	5 Percent Goal	Amount Reported	Percent Reported
California State University	\$ 247,904,908	\$ 37,185,736	\$ 3,032,423	1.22%	\$ 12,395,245	\$ 3,387,742	1.37%
Corrections	477,008,841	71,551,326	5,293,416	1.11	23,850,442	1,947,197	0.41
General Services	1,242,221,498	186,333,225	5,928,445	0.48	62,111,075	42,177,313	3.40
Transportation	1,647,668,044	247,150,207	150,952,929	9.16	82,383,402	42,184,734	2.56
Water Resources	110,855,818	16,628,373	1,005,017	0.91	5,542,791	311,526	0.28
Total	\$3,725,659,109	\$558,848,867	\$166,212,230	4.46%	\$186,282,955	\$90,008,512	2.42%

Table 4 shows a similar analysis for the data four of the five agencies in our sample reported directly to the Legislature and the governor for 1990. For example, the table shows that the Department of General Services reported approximately \$5.6 million for minority businesses; however, we determined that, to meet the participation goal of at least 15 percent for minority businesses, the amount reported would have to increase by more than \$156 million. In addition, the table shows that the four agencies reported participation levels of more than \$88.8 million for minority-owned businesses and nearly \$35.2 million for women-owned businesses; however, if these agencies had achieved the participation goals of at least 15 and 5 percent, they would have reported more than \$290.7 million for minority-owned businesses and more than \$96.9 million for women-owned businesses. As a result, the total amounts reported by these agencies would have to increase by more than \$201.9 million for minority-owned businesses and \$61.7 million for women-owned businesses.

Table 4

**Comparison of Amounts Five State Agencies
Reported to the Legislature and the Governor
With Amounts Calculated at Full Participation
for Minorities' and Women's Businesses
1990**

Department	Total Contract Dollars	Minority Participation			Women's Participation			Reporting Period
		15 Percent Goal	Amount Reported	Percent Reported	5 Percent Goal	Amount Reported	Percent Reported	
California State University	\$ 443,198,478	\$ 66,479,772	\$ 16,661,068	3.76%	\$ 22,159,924	\$ 9,570,969	2.16%	Calendar year 1990
Corrections	361,644,152	54,246,623	63,648,798	17.60	18,082,208	21,747,540	6.01	Calendar year 1990
General Services	1,084,000,000	162,600,000	5,650,000	0.52	54,200,000	3,320,000	0.31	Fiscal year 1989-90
Transportation	No Report	No Report	No Report	No Report	No Report	No Report	No Report	No Report
Water Resources	49,500,000	7,425,000	2,886,715	6.00	2,475,000	536,732	1.00	Calendar year 1990
Total	\$1,938,342,630	\$290,751,395	\$88,846,581	4.58%	\$96,917,132	\$35,175,241	1.81%	

Corrective Action In an attempt to simplify the process that state agencies use to track their data for reporting their participation levels, the OSMB recently informed state agencies that it is revising the form the agencies currently use to report the participation of small businesses in state contracts and purchases as required by the Small Business Contract and Procurement Act. The revised form will include a section for agencies to report their data for the participation of minorities' and women's businesses in state purchases and contracts.

The purpose of revising the form is to collect one set of data for both the OSMB's annual report and the state agencies' annual reports submitted directly to the Legislature. The OSMB anticipates that the new form will be finalized and state agencies will start using it beginning with the first quarter of fiscal year 1991-92.

Conclusion The data that the Office of Small and Minority Business and state agencies include in their annual reports do not always accurately reflect the actual participation levels of minorities' and women's businesses. Although not required to by law, the OSMB has chosen to provide information on the participation levels of minorities' and women's businesses in its annual reports; however, the information is not always accurate. Similarly, the data in the annual reports that four of the five state agencies in our sample submitted to the Legislature and the governor did not accurately reflect the participation levels of minorities' and women's businesses in contracts. Moreover, we determined that some state agencies have not prepared the reports for the Legislature and the governor even though they are required to do so by law. Finally, we determined that although the data included in the OSMB reports and the reports prepared by four of the five state agencies in our sample are inaccurate, the participation levels are so low that it appears unlikely that these agencies would have met the participation goals of at least 15 and 5 percent for minorities' and women's businesses even if the data had been accurate.

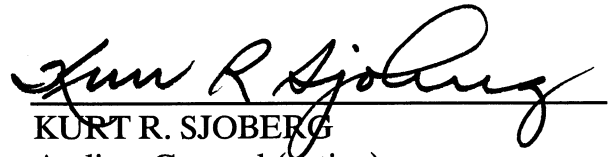
Recommendations

To ensure that the data regarding the statewide participation levels of minorities' and women's businesses are accurate, the Legislature should revise the Public Contract Code to accomplish the following:

- Assign the Office of Small and Minority Business as the office responsible for providing instructions to state agencies for reporting data on the participation levels of minorities' and women's businesses in state contracts and purchases;
- Require state agencies to report participation levels to the OSMB rather than directly to the Legislature and the governor; and
- Require the OSMB to include in its annual report to the Legislature participation levels of minorities' and women's businesses in state contracts and procurements, the reasons agencies have identified for not meeting the goals, and remedial steps agencies plan to take to increase participation levels.

We conducted this review under the authority vested in the auditor general by Section 10500 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,


KURT R. SJOBERG
Auditor General (acting)

Date: August 12, 1991

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Memorandum

To: Kurt R. Sjoberg
Acting Auditor General
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Date: August 8, 1991

From: Office of the Secretary
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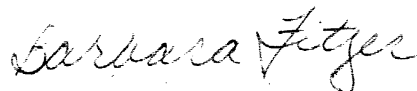
Subject:

RESPONSE TO AUDITOR GENERAL REPORT NO. P-131

Thank you for the opportunity to respond to your Report P-131 entitled "California's Efforts to Meet Participation Goals for Minorities' and Women's Businesses in State Contracts". The attached response from the Department of General Services addresses each of your recommendations.

If you need further information or assistance on this issue, you may wish to have your staff contact John Lockwood, Director, Department of General Services, at 445-3441.

Sincerely,



BARBARA FITZER
Deputy Secretary

cc: John Lockwood, Director,
Department of General Services

Rick Gillam, Manager
Department of General Services

MEMORANDUM

Date: August 7, 1991

File No: P-131

To: Dr. Bonnie Guiton, Secretary
State and Consumer Services Agency
915 Capitol Mall, Room 200
Sacramento, CA 95814

From: **Executive Office**
Department of General Services

Subject: **COMMENTS TO AUDITOR GENERAL REPORT NO. P-131 -- CALIFORNIA'S EFFORTS TO MEET PARTICIPATION GOALS FOR MINORITIES' AND WOMEN'S BUSINESSES IN STATE CONTRACTS**

Thank you for the opportunity to comment on Office of the Auditor General (OAG) Report No. P-131 on the Statewide program for the participation of minority- and women-owned business enterprises in State contracts. This audit included a review of the activities of the Department of General Services' (DGS), Office of Small and Minority Business (OSMB), related to this program. Further, it included visits and reviews at the following DGS' offices: Office of Buildings and Grounds; Office of Procurement; Office of Real Estate and Design Services; and Office of the State Architect. The following response provides DGS comments on each of the recommendations.

OVERVIEW OF REPORT

The DGS has reviewed the findings, conclusions, and recommendations presented in Report No. P-131. As discussed in this response, the DGS believes the recommendations that affect its operations have merit.

It should be noted that since the effective date of the Statutes pertaining to Statewide participation goals for minority- and women-owned business enterprises in State contracts, through the activities of the OSMB, the DGS has actively assisted in the implementation of an effective Statewide program. This has included the OSMB performing numerous outreach activities to advise minority- and women-owned businesses of State contracting opportunities. Further, OSMB staff have provided training to State agency contracting personnel to assist them in implementing an effective participation program in their agency. The OSMB will continue to perform Statewide activities to assist in implementing this program.

CHAPTER 1**SOME AGENCIES HAVE BEEN SLOW TO IMPLEMENT
THE LAW REQUIRING PARTICIPATION OF MINORITIES'
AND WOMEN'S BUSINESSES IN STATE CONTRACTS**

"To ensure that minority- and women-owned businesses have the opportunity to participate in contracts with the State, state agencies should take the following actions:"

RECOMMENDATION: "Adopt regulations for implementing the law requiring state agencies to have statewide participation goals of at least 15 percent and 5 percent for minority- and women-owned businesses."

DGS COMMENTS: As noted in the report, effective May 1990, the DGS implemented its regulations. Further, the DGS through Management Memo 90-11 issued its regulations as a Statewide guide for other agencies in developing their own regulations. Many State agencies have incorporated these guidelines into their regulations.

RECOMMENDATION: "Fully implement policies and procedures to ensure that successful bidders are either meeting the statewide participation goals or are making good faith efforts to meet the goals by attempting to include minority- and women-owned businesses in their contracts."

DGS COMMENTS: The DGS has a commitment to fully implement any policies and procedures that are necessary to ensure compliance with its regulations. To date, all of DGS' offices have been provided with the regulations and training in their implementation. The regulations contain language for insertion into Invitations for Bids or Requests for Proposals for contracts. The language informs potential bidders of the Public Contract Code (PCC) requirements, which are to either meet the participation goals or demonstrate good faith efforts to meet the goals. Bidders failing to meet these requirements are considered nonresponsive and ineligible for a contract award.

CHAPTER 2

REPORTS ON THE STATEWIDE PARTICIPATION LEVELS OF MINORITIES' AND WOMEN'S BUSINESSES IN STATE CONTRACTS ARE NOT ACCURATE

"To ensure that the data regarding the statewide participation levels of minorities' and women's businesses are accurate, the Legislature should revise the Public Contract Code to accomplish the following:"

RECOMMENDATION: "Assign the Office of Small and Minority Business as the office responsible for providing instructions to state agencies for reporting data on the participation levels of minorities' and women's businesses in state contracts and purchases."

DGS COMMENTS: The DGS concurs with this recommendation. This recommendation would clarify the role of OSMB and other State agencies in the minority- and women-owned business enterprise data collection process. To ensure consistency in the application of the Statute, it is also recommended that changes to the PCC include definitions of each minority group. In addition, in a related area, the PCC should be revised to include disabled veteran business enterprise data collection to meet the intent of Chapter 1207, Statutes of 1989.

RECOMMENDATION: "Require state agencies to report participation levels to the OSMB rather than directly to the Legislature and the governor."

DGS COMMENTS: The DGS concurs with this recommendation and believes implementation could be accomplished with minimal impact on the staff resources of other State agencies. The revised quarterly participation report, Std. Form 810, will provide for the collection of the recommended participation data and will be compiled by OSMB for reporting to the Legislature and the Governor. This revision is planned for completion by the end of September 1991.

RECOMMENDATION: "Require the OSMB to include in its annual report to the Legislature participation levels of minorities' and women's businesses in state contracts and procurements, the reasons agencies have identified for not meeting the goals, and remedial steps agencies plan to take to increase participation levels."

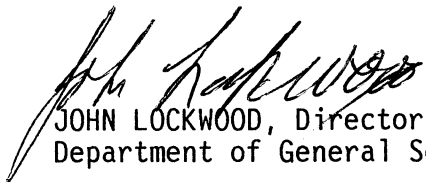
DGS COMMENTS: With the revision of the Std. Form 810 to allow for accumulation of data on the participation levels of minorities' and women's businesses in State contracts and procurements, the inclusion of this data in OSMB's annual report can be performed. However, the gathering process for the other information addressed by this recommendation would require an increase in OSMB's workload and, therefore, requires additional study. Specifically, the revised Std. Form 810 process has not been foreseen as involving steps for the gathering of data on the reasons agencies have identified for not meeting their participation goals, and the remedial steps agencies plan to increase participation levels.

The shift toward preparing one participation report for all State agencies appears to be cost-effective. While the DGS is concerned with the additional resources that may be necessary to completely implement this recommendation, it believes that the additional information is relevant.

CONCLUSION

The DGS has a firm commitment to fully implement the Statewide program for the participation of minorities' and women's businesses in State contracts. As in the past, DGS staff are available to discuss the implementation of this program with interested parties. Further, the DGS will comply with any actions ultimately taken by the Legislature to address the issues presented in the OAG report.

If you need further information or assistance on this issue, please call me at 445-3441.


JOHN LOCKWOOD, Director
Department of General Services

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BUSINESS, TRANSPORTATION AND HOUSING AGENCY

August 8, 1991

Mr. Kurt R. Sjoberg
Auditor General (Acting)
Office of the Auditor General
660 J Street, Suite 300
Sacramento, CA 95814

Dear Mr. Sjoberg:

Thank you for the opportunity to review and comment on the draft audit report entitled "California's Efforts to Meet Participation Goals for Minorities' and Women's Businesses in State Contracts."

After reviewing the report, I have no comments.

We appreciate the time and cooperation from your staff in conducting the audit. Thank you for the opportunity to review and comment on this report.

Sincerely,

A handwritten signature in black ink, appearing to read "Carl D. Covitz".

CARL D. COVITZ
Secretary

THE CALIFORNIA STATE UNIVERSITY

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August 8, 1991

Mr. Kurt R. Sjoberg
Auditor General (Acting)
Office of the Auditor General
660 J Street, Suite 300
Sacramento, CA 95814

Dear Mr. Sjoberg:

Response to Request for Review and Comments on Your Report Entitled
"California's Efforts to Meet Participation Goals for Minorities' and
Women's Businesses in State Contracts" (P-131)

We have received your August 1, 1991, letter forwarding a copy of your above-referenced report and appreciate an opportunity to respond to its contents relating to California State University (CSU) contractual activities.

In concert with our very successful small business participation program, the California State University is committed to effectively implementing procedures to meet the new 15 percent/5 percent minorities' and women's business enterprises (MWBE) participation goals. We believe we are making progress but, as with all state agencies, we were delayed in the initial implementation while draft regulations were being developed by the Department of General Services. As we informed the auditors, the Departments of General Services (DGS) and Finance issued Management Memos requesting state agencies to delay implementing departmental regulations until sample regulations were finalized by DGS. Once the samples were made available in May 1990, the CSU proceeded with finalizing its own regulations.


We note that the report does not address the resources needed for implementation of the MWBE program. Effective implementation will involve a significant commitment of University resources. The initial legislation did not provide resources; we hope such support can be added to our budget as soon as the fiscal condition of the state permits. In the interim, we will continue to divert a portion of our limited funds toward increasing MWBE participation. This will be difficult given that many campus functions, including purchasing offices, are experiencing staff reductions. We will continue to make progress with the MWBE program, but it may not be as fast as we would like.

Mr. Kurt R. Sjoberg
August 8, 1991
Page Two

With regard to the recommendations, we wish to note our support for the suggestion that the Office of Small and Minority Business (OSMB) be given the responsibility for providing reporting instructions to the agencies and for making a consolidated annual report to the Governor and the Legislature.

The CSU is committed to making progress in meeting the participation goals, and we appreciate the assistance from OSMB and other state departments in that effort.

Sincerely,



Barry Munitz
Chancellor

BM:ejs

cc: Dr. Herbert L. Carter, Executive Vice Chancellor
Bruce M. Richardson, Esq., Acting General Counsel
Mr. Louis V. Messner, Acting Vice Chancellor, Business Affairs
Mr. John S. Hillyard, Assistant Vice Chancellor,
Auxiliary and Business Services
Mr. Boyd W. Horne, Assistant Vice Chancellor,
Management and Business Analysis

Memorandum

Date : **AUG 08 1991**

To : B-24
Kurt R. Sjoberg
Acting Auditor General
Office of the Auditor General
660 J Street, Suite 300
Sacramento, California 95814

From : Office of the Secretary
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Subject: California's Efforts to Meet Participation Goals for
Minorities' and Women's Businesses in State Contracts

This is in response to your draft report of the Office of the Auditor General (P-131) entitled "California's Efforts To Meet Participation Goals for Minorities' and Women's Businesses in State Contracts." I have been asked to comment regarding your recent audit of the Department of Water Resources' efforts to meet participation goals for minorities' and women's businesses in state contracts.

The Department of Water Resources has reviewed the draft report, and generally is in agreement with your recommendations.

They had the following comments and will take steps to carry out the recommendations where applicable.

Recommendation: "To ensure that minorities' and women's businesses have the opportunity to participate in contracts with the State, state agencies should adopt regulations for implementing the provisions of the Public Contract Code."

Comment: DWR wishes to clarify its understanding of the necessity to adopt regulations for implementing the provisions of the Public Contract Code. The Department utilizes two procedures for contracting: service, consultant service, and procurement contracts, which are reviewed by the Department of General Services; and State Contract Act contracts (construction), which are processed internally within DWR.

Regulations for implementing the provisions of the Public Contract Code as relating to service, consultant service, and procurement contracts have been developed; this may not have been clear to the auditors. In 1985, the Legislature imposed M/WBE participation requirements upon the Department of Corrections. (See Public Contract Code Sections 10108.5 et

Kurt R. Sjoberg
AUG 08 1991
Page Two

seq.) The scope of that statute was limited to construction contracts let by the Department of Corrections. Under Section 10108.5(d), Corrections must adopt regulations to implement that statute and did so in 1986.

In 1988, the Legislature passed AB 1933 to require M/WBE participation in state service, consultant service, procurement, and professional bond service contracts. (See Public Contract Code Sections 10115 et seq. and Government Code Sections 16850 et seq.) AB 1933 has been subsequently amended. Under those provisions, the Department of General Services and the State Treasurer adopted regulations implementing these requirements for service, consultant service, and procurement contracts, and professional bond service contracts, respectively, which are under their review jurisdiction. These regulations were written to apply to awarding agencies whose contracts are subject to General Services' and the Treasurer's review. The Department of General Services has further implemented its regulations through Management Memos and revisions to the State Administrative Manual.

DWR has acted in accordance with the above rules and regulations in its efforts to comply with Section 10115 et seq. for contracts under General Services' purview.

With respect to State Contract Act contracts, DWR is in the process of drafting regulations for inclusion in the California Code of Regulations.

Recommendation: "They should also fully implement policies and procedures to ensure that successful bidders are either meeting the statewide participation goals or are making good faith efforts to meet the goals by attempting to include minorities' and women's businesses in their contracts."

Comment: We agree. We have established policies and procedures for achieving the participation of minorities' and women's businesses in its contracts. In addition, the Department is revising its Department Administrative Manual and its Administrative Procedures Manual to include these policies and procedures. Because these two manuals are interrelated, and in order to coincide with the next scheduled Department Administrative Manual revision, staff plan to simultaneously complete the revisions of both manuals by the end of the calendar year.

Recommendation: "To ensure that the data regarding the statewide participation levels of minorities' and women's businesses are accurate, the Legislature should revise the Public Contract Code to accomplish the following:

- Assign the OSMB as the office responsible for providing instructions to state agencies for reporting data on the participation levels of minorities; and women's businesses in state contracts and purchases;
- Require state agencies to report participation levels to the OSMB rather than directly to the Legislature and the Governor;
- Require the OSMB to include in its annual report to the Legislature participation levels of minorities' and women's businesses in state contracts and procurements, the reasons agencies have identified for not meeting the goals, and remedial steps agencies plan to take to increase participation levels.

Comment: We agree. However, because of the difficulties outlined in the audit report regarding Office of Small and Minority Business' reporting procedures and interpretation of data, an opportunity for participating departments to review OSMB's draft report to the Legislature should be included when OSMB's procedures are developed. This review of the draft information would give participating Departments an advance opportunity to verify all information provided and help ensure the validity of the final report.

If you have any questions or need further information, you may contact William H. Frye, Chief, Division of Management Services, Department of Water Resources, at ATSS 485-7164.


Douglas P. Wheeler
Secretary for Resources

YOUTH AND ADULT CORRECTIONAL AGENCY

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August 8, 1991

Kurt R. Sjoberg
Auditor General (acting)
Office of the Auditor General
660 J Street, Suite 300
Sacramento, CA 95814

Dear Mr. Sjoberg:

Thank you for the opportunity to review and comment on the audit report, California's Efforts to Meet Participation Goals for Minority and Women Businesses in State Contracts, dated August 1, 1991.

We are pleased that the report acknowledges the California Department of Corrections' (CDC) efforts and success in achieving the Minority and Women Business Enterprises (M/WBE) goals in the prison construction program contracts. In 1990, for construction contracts, MBE participation exceeded 17% and WBE participation exceeded 5%. For professional services contracts, MBE participation exceeded 21% and WBE participation exceeded 8%.

We agree that, like other departments, CDC has had difficulties in implementing the legislative requirements in the services and commodities contracts. Our delay in implementing these provisions has been, in part, the result of problems in applying the legislative requirement originally developed for construction contracts to contracts that do not meet the construction model.

The good faith effort language presents several problems in services and commodities contracts. In construction, it is normal practice to subcontract; however, with services and commodities businesses, it is not. Some problems encountered in implementing

the M/WBE program in service contracts and commodity purchases are:

- non-existent or limited subcontractable work,
- identification of certified M/WBEs,
- availability of certified M/WBEs,
- single service/purchase contracts,
- small dollar size of the contracts,
- inability of minority business development centers to provide M/WBE referrals and technical assistance, and
- emergency contracts.

The Department is focusing on specific activities for service and commodities contracts to bolster and achieve greater M/WBE participation statewide. Activities include:

- developing procedures which will be used by all institutions and reporting units and will provide for a more accurate and consistent method of reporting,
- conducting more outreach to educate vendors on certification requirements, and
- expanding the list of acceptable certification agencies to allow vendors increased opportunity for obtaining certification.

While we have had success in achieving the M/WBE goals in new prison construction and in professional services contracts for construction, the good faith effort language also does not work well with professional services contracts. In the Request for Proposal/Statement of Qualifications process specified in Government Code 4525 et. seq., the scope of work is defined and the dollar amount cannot be evaluated at the time of selection. In addition, the good faith effort step of advertising is not a typical method of doing business for architects and engineers and there are no timely publications in which to advertise.

Implementing the more recent legislative requirements for the Disabled Veteran Business Enterprises (DVBE) is made even more difficult by the fact that there is currently nothing in place in the private or public sector to make achievement of the goal or

the good faith effort steps possible. While the Department is attempting to comply with the DVBE mandate, our research has shown that there are:


- no available listing for certified DVBEs,
- no DVBE focus/trade papers in which to advertise,
- no State or federal agencies exists which either identify or refer DVBEs,
- no business development centers that provide referrals.

As indicated in the report, all five agencies audited are experiencing difficulties implementing the statute.

The Department of Corrections believes that it has been in compliance since July 1990 for services and commodities contracts. The Department evaluates the good faith effort and includes appropriate contract compliance language into every bid package. Additionally, for approximately two years, the Department had been and continues to be, very active in the area of outreach efforts by attending seminars, conferences and workshops focused at services and commodities. The Contract and Business Services Branch has developed a two-day training seminar for all CDC institution and paroles staff involved in the contracting and procurement process primarily focusing on M/WBE compliance. Additionally, Central Office staff has also actively participated in pre-bid conferences to ensure that vendors have an opportunity to fully explore all of the M/WBE requirements prior to developing and submitting bid proposals. CDC has also taken the voluntary position to obtain one bid from an MBE or WBE for all purchases under \$10,000. This expectation has been made clear to all field purchasing agents in the form of written instructions.

Again, thank you for the opportunity to provide our response to the report and most importantly being able to address the difficulties we are experiencing in implementing PCC Section 10108.5 and 10108.6 in services and commodities contracts.

If you have any questions, please feel free to contact James H. Gomez, Director of Corrections, at 445-7688.


JOE G. SANDOVAL
Agency Secretary

cc: James H. Gomez

**cc: Members of the Legislature
Office of the Governor
Office of the Lieutenant Governor
State Controller
Legislative Analyst
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Majority/Minority Consultants
Capitol Press Corps**